

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-(b) (6)

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

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**DEFENSE UPDATED
REQUESTED WITNESSES:
SPEEDY TRIAL MOTION**

DATED: 2 October 2012

1. On behalf of PFC Bradley E. Manning, his civilian counsel, David E. Coombs, requests the attendance of those witnesses identified within the Defense's 24 August 2012 filing for purpose of the Speedy Trial motion.

2. Based upon the Government's case chronology provided on 26 September 2012, the Defense is unable to narrow its requested witnesses for this motion. *See* Government Notice for Speedy Trial Chronology, [hereinafter "Government Notice"] dated 26 September 2012. It was anticipated that the Government's chronology would assist the Defense in determining which witnesses were still needed from the Defense's 24 August 2012 filing. Unfortunately, the Government's chronology failed to provide an appropriate accounting of the Government's activities.

3. The Government's chronology is both over-inclusive and under-inclusive at the same time. With respect to the chronology being under-inclusive, it fails to detail what the Government was doing with respect to key issues (e.g. *Brady* discovery, other discovery, classification reviews). Instead the entries are so skeletal that they provide no useful information in gauging diligence. As indicated in the Defense's previous filing, the Government repeated the same catchphrase "Worked generally to produce discoverable information, develop evidence and witnesses, identify other potentially discoverable material and associated equity holders, and prepare for Article 32 investigation/trial" approximately 550 times.

4. More troubling, perhaps, is the fact that the Government's chronology is ridiculously over-inclusive. Among the examples of items that should not appear in a speedy trial chronology are the following:

- The Government lists at least 194 entries for a combination of "leave", "holidays", medical issues (to include doctor's appointments, "wife's surgery" and "refractive eye surgery"), special events (to include promotion ceremonies, a recruitment event, a party, and a Thanksgiving lunch) and training (to include DADT training and human trafficking training).
- The Government listed approximately 82 entries for various "trackers" (expenses, TDY, speedy trial, *Giglio*); it separately listed 32 entries for "Speedy trial calendar."

- The Government’s requesting of delay, the approval of the request for delay and ancillary entries related to delay appear over 130 times in the Government’s chronology.
- The Government listed approximately 37 entries dealing with the coordination of travel and 39 other entries dealing specifically with coordinating the accused’s movement.
- The Government’s own internal phone calls with the Office of the Staff Judge Advocate were individually chronicled in 103 entries.
- “Budgeting” was referenced 27 times.
- The fact that CCIU was apparently temporarily inoperable was listed a total of 10 times.
- Administrative matters are chronicled in detail (including references to scanning, sending the computer experts’ contract to Fort Myer, gathering attestations, getting clearances, etc.). There are 80 references, for instance, to arranging for clearances and 30 entries where the Government was gathering attestations.

This list is not meant to be exhaustive. It is instead meant to illustrate the absurdity of the Government’s chronology and just how much completely irrelevant entries the Government has added to pad the chronology.

5. As if that were not troubling enough, the Government’s “chronology” is not a chronology at all – it is a compilation of the various trial counsels’ timesheets for the past two and a half years. This is clear when one looks at certain entries referencing “joined prosecution team” (*see, e.g.*, 9 May 2011 and 15 May 2011 entries from Government Notice at 84, 86). It is clear that two different people joined the prosecution team on those separate days, indicating that the individual entries belong to different people. Also, the reference to “wife surgery” can relate to only one of the several trial counsel in this case. Further, there are references to multiple instances of “leave” on the same day (*see, e.g.* 3 August 2011, referring to “leave” and “convalescent leave”). *Id.* at 113. It is clear – and the Government cannot deny – that the “chronology” is really just an amalgam of individual time sheets. The problem with this (other than not being an appropriate way to create a chronology) is that many of the entries are duplicative. For instance on 14 March 2011, the Government has three separate entries dealing with the same thing – the RCM 706 extension request (“14-Mar-11 Mon RCM 706 board confirmed that 9 April would be preferred over 4 April; 14-Mar-11 Mon RCM 706 board member agreed to arrange an appointment for brain imaging and neurological examination for accused, and informed the prosecution that a RCM 706 board member will be on leave on 2 April; 14-Mar-11 Mon RCM 706 board submitted extension request). *Id.* at 65. On 30 June 2011, there are two separate entries dealing with an exceedingly minor issue, MAJ Kemkes’ signed protective order (30-Jun-11 Received court order acknowledgement and signed protective order from MAJ Kemkes; 30-Jun-11 SecArmy PO Acknowledgment-Kemkes). *Id.* at 103. On 13 July 2011, the Government twice referenced the meeting with the SPCMCA to discuss excludable delay (13-Jul-11 Meeting with SPCMCA to discuss accounting of excludable delay memorandum; 13-Jul-11 Wed SPCMCA Accounting of Excludable Delay Memorandum). *Id.* at 106. On 14 July 2011, the same entry appears twice, dealing with how to transfer unclassified information from a closed system (14-Jul-11 Thu Email with HQDA-prosecution sought guidance on how to transfer unclass information from classified closed system; 14-Jul-11 Thu Email with IA to discuss transfer authority for classified computer systems). *Id.* at 106. There are simply too many of these duplicative entries to count – but the Defense estimates that there are many hundred duplicative entries. These duplicative entries appear all over the “chronology” for obvious reasons – the various trial counsel are often involved in the same email chain, phone calls, etc. However, that does not mean that the

Government can make it appear like there were two or three *separate* things happening. On certain occasions, variations of what was probably the same thing were listed separately. For instance, on 20 July 2011, the following entries are listed

- a) Email with FBI-coordinate for a meeting
- b) Meeting-with FBI to discuss obtaining a copy of main FBI file to conduct Brady review
- c) Phone call with FBI to discuss obtaining a copy of main FBI file to conduct Brady review

Id. at 108. Based on these entries, it appears that there was an email to the FBI, followed by a phone call to the FBI, followed by a meeting with the FBI – all in the same day. In reality, these are more than likely the same entry by different trial counsel.

6. The Defense does not know why the Government chose to compile a chronology by amalgamating the various trial counsel’s timesheets and by including so much truly irrelevant information. At bottom, though, the “chronology” provides absolutely no assistance to the Defense in answering the many questions that the Defense has had since the beginning of the case – why did things move at such a glacial pace? The Defense needs the witnesses on its list to answer key questions because it is clear that the Government refuses to do so with any degree of clarity.

7. The Defense believes that the only way to potentially narrow the Defense requested witness list for the Speedy Trial motion is by the Court ordering the Government to provide a copy of Appellate Exhibit 264. Although the Government’s filing was *ex parte*, based upon the Defense’s Speedy Trial motion, this filing should no longer remain *ex parte*. See Defense Request For the Court to Order the Government to Disclose its Ex Parte Due Diligence Filing to the Defense and to Provide a Word or Excel Version of its Speedy Trial Chronology, [hereinafter Defense Due Diligence and Speedy Trial Motion”] dated 27 September 2012. If Appellate Exhibit 264 is provided to the Defense, the Defense will quickly review it to determine if the information from the filing will enable to Defense to narrow its requested witnesses.

8. The Defense also requested the Court to order a Word or Excel version of the general chronology provided by the Government. *Id.* The Defense believes the Court would benefit from seeing a version of the “chronology” without the unnecessary filler to see what the Government has actually been doing for the past two and a half years.

9. As a result of the Defense’s Speedy Trial/Article 10 motion, the Government is required to provide an account of its activities. See *United States v. Laminman*, 41 M.J. 518 (C.G.Ct. Crim App. 1994)(court suggests that the best way for the military judge to proceed with an Article 10 motion would be to have the parties enter a stipulation of fact as to the undisputed portions of chronology and then to present evidence on those relevant matters upon which there is disagreement.). In this instance, being provided a copy of Appellate Exhibit 264 and a Word or Excel version of the Government’s chronology will allow the Defense to review the information and to identify any undisputed portions of chronology in order to enter into a stipulation of fact on the undisputed portions. As for the remaining chronology, the Government and the Defense can then present evidence on those relevant matters upon which there is disagreement.

Narrowing the scope of the Speedy Trial/Article 10 issues will also likely result in the elimination of one or more of the requested witnesses, and enable the Government and Defense to focus their witness lists on only the disputed portions of the chronology.

10. Without the benefit of additional information from the Government (Appellate Exhibit 264), the Defense requests the attendance of those witnesses identified within the Defense's 24 August 2012 filing for purpose of the Speedy Trial motion.

Respectfully submitted,

DAVID EDWARD COOMBS
Civilian Defense Counsel